

ORDINANCE NO. 738

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY TO PROVIDE FOR THE PERMITTING AND REGULATION OF MEDICAL MARIJUANA DISPENSARIES IN SPECIFIED ZONES OF THE CITY BY ISSUANCE OF A CONDITIONAL USE PERMIT

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY DOES ORDAIN AS FOLLOWS:

Section 1. CHAPTER 9.108 OF THE CATHEDRAL CITY MUNICIPAL CODE REPEALED AND AMENDED

Chapter 9.108 "Medical Marijuana Dispensaries" of Title 9, Planning and Zoning, of the Cathedral City Municipal Code, is hereby repealed in its entirety and amended to read as follows:

9.108.010 Purpose.

The purpose of this Chapter 9.108 is to regulate Medical Marijuana Dispensaries, to the extent allowed by State Law in a way that will minimize the impacts on the City and neighboring uses, and promote the health, safety, morals, and general welfare of residents and businesses within the City. It is neither the intent nor the effect of this Chapter to condone or legitimize the use of marijuana.

9.108.020 Relationship to Other Laws.

- A. This Chapter is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to any activity that is regulated by federal and state law to the extent that application of this Chapter would conflict with such law or would unduly interfere with the achievement of federal and state regulatory purposes.
- B. This Chapter is consistent with State Law because of the provisions of the Compassionate Use Act, the Medical Marijuana Program Act, the Attorney General's Guidelines and applicable case law interpreting the application of these acts to local permitting and regulation of Medical Marijuana Dispensaries.

9.108.030 Definitions.

- A. "City Manager" shall mean the City Manager of the City of Cathedral City or his/her duly authorized designee.
- B. "Community Development Director" or "Director" shall mean the Community Development Director of the City of Cathedral City or his/her duly authorized designee.
- C. "Medical Marijuana" means marijuana authorized in strict compliance with Health and Safety Code sections 11362.5 and 11362.7 *et seq.*, as such sections may be amended from time to time.
- D. "Medical Marijuana Collective or Cooperative" or "Cooperative or Collective" means any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (attached to this Ordinance as Exhibit A), as may be amended from time to time, that was issued by the Office of the Attorney General for the State of California and is on file in the Office of the City Clerk, and subject to the provisions of California Health and Safety Code section 11362.5 (Compassionate Use Act of 1996), and California Health and Safety Code sections 11362.7 to 11362.83 (Medical Marijuana Program Act).
- E. "Medical Marijuana Dispensary" or "Dispensary" means any business, office, store, or other retail "storefront" component of any Medical Marijuana Cooperative or Collective that dispenses, distributes, exchanges, sells or provides Medical Marijuana to members of any Medical Marijuana Cooperative or Collective consistent with the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the Office of the Attorney General for the State of California, and for the purposes set forth in California Health and Safety Code section 11362.5 (Compassionate Use Act of 1996) and California Health and Safety Code sections 11362.7 to 11362.83 (Medical Marijuana Program Act), and subject to the provisions of this Chapter and other applicable provisions of this Code.
- F. "State Law(s)" shall mean and include those Acts and Guidelines set forth in Section 9.108.040 of this Chapter, and all other applicable laws of the state of California.
- G. "Physicians" as used in this Ordinance shall mean a medical doctor licensed by the State of California to practice as such.

9.108.040 Other Definitions.

Words and phrases not specifically defined in this Chapter shall have the meaning ascribed to them as defined in the following sources:

1. The Compassionate Use Act of 1996 (Health and Safety Code Section 11362.5);
2. The Medical Marijuana Program Act (Health and Safety Code Sections 11362.7 through 11362.83); and
3. The California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008 (hereinafter "Attorney General's Guidelines"), as such guidelines may be revised from time to time by action of the Attorney General.

9.108.050 Conditional Use Permit Required to Operate.

- A. Medical Marijuana Dispensaries shall only be permitted to operate in the City following application, investigation, verification, notice and public hearing, approval and issuance of Conditional Use permit by the Planning Commission in accordance with the criteria and procedures set forth in this Chapter and Chapter 9.72 of this Code. No land use entitlement, permit (including building permit) approval, site plan, certificate of occupancy, zoning clearance, or other land use authorization for a Medical Marijuana Dispensary shall be granted or permitted unless a Medical Marijuana Dispensary Conditional Use Permit ("Dispensary Conditional Use Permit") is first obtained and issued in conformance with the provisions of this Chapter and Chapter 9.72. If there is a conflict between the requirements of Chapter 9.72 and this Chapter, the requirements of this Chapter 9.108 shall prevail.
- B. A Dispensary shall also be required to apply for and obtain a Business License in accordance with the provisions of Chapter 3.28 of this Code. The issuance of the Conditional Use Permit provided for this Chapter shall satisfy requirements of Chapter 5.01 ("Business Licenses for Regulation") of this Code.

9.108.060 Permitted Zones; Distance and Other Requirements.

- A. No Medical Marijuana Dispensary shall be established, developed, operated or located:
1. Within six hundred (600) feet of a school, public playground or park, child care or day care facility, or youth center, or;
 2. Within one thousand (1,000) feet of any other Medical Marijuana Dispensary; or
 3. In any residential zone; or
 5. Within two hundred fifty (250) feet of East Palm Canyon Drive or a residential zone.
- B. All distances specified in this Section shall be measured in a straight line, without regard to intervening structures, from the nearest point of the building or structure in which the Medical Marijuana Dispensary is, or will be located, to the nearest property line of those uses described herein.
- C. Subject to the distance and other requirements of this Chapter, a Medical Marijuana Dispensary may only be located or established on property within the I-1 Light Industrial District Zone, the CBP-2 Commercial Business Park District Zone or the PCC Planned Community Commercial District Zone following the application for and granting of a Conditional Use Permit by the Planning Commission in accordance with this Chapter and Chapter 9.72 of this Code. In addition to the findings required by Section 9.72.010 of this Code, the Planning Commission shall also consider whether the approval of the proposed use will violate the minimum requirements set forth in this Chapter for distance separations between other dispensaries and other specific land uses.
- D. A Medical Marijuana Dispensary shall be limited in size to a maximum of 2,000 square feet, inclusive of restroom facilities, unless specifically authorized otherwise in the Dispensary Conditional Use Permit, but in no event be more than 2,500 square feet. Dispensary size shall be limited, as deemed appropriate and necessary, to best serve patient needs within the intent of this Chapter and reduce potential adverse impacts that might otherwise occur on surrounding neighborhoods, businesses and demands on City services. A Dispensary shall not be increased in size (i.e., floor area or number of patients) without a prior approval amending the existing Dispensary Conditional Use Permit.
- E. No Medical Marijuana Dispensary shall be permitted or established as an accessory use to any other use permitted by this Code.
- F. No more than one Medical Marijuana Dispensary may operate out of a single building.

9.108.070 Number of Medical Marijuana Dispensaries.

- A. The number of Medical Marijuana Dispensaries maintained or permitted to operate within the City at any given time shall be limited to one (1) per fifteen thousand (15,000) city residents. For clarification, for fractions of the population, the number of dispensaries shall be the lower of the two numbers. For example, if the population is 55,000, the number of dispensaries allowed would be three (3). When the population hits 60,000, the number of dispensaries would be four (4). The population figures to be used shall be those determined and promulgated by the California Department of Finance. In no case shall a Dispensary that was operating in violation of the City's prior ban be permitted to continue operating, nor affect the total number of Medical Marijuana Dispensaries allowed to operate within the City.
- B. If applications for the Conditional Use Permits required to establish Dispensaries in excess of the number allowed under Section 9.108.070.A are received and determined to be complete, permits shall be granted by drawing lots in accordance with the following:
 - 1. If, six (6) City business days after the occurrence of the effective date of this ordinance, more than two (2) complete applications for Dispensary Conditional Use Permits have been received by the Community Development Department, City staff shall draw lots and create a list to ascertain the order in which the applications shall be processed and considered by the Planning Commission for issuance of Dispensary Conditional Use Permits. Each application shall be processed and considered in the order determined by the lottery list until the available number of permits (as allowed under Section 9.108.070.A) have been granted. If, after all of the applications on the original list have been processed and heard, and there are still Dispensary Conditional Use Permits available, then a new lot drawing will take place as follows:
 - a. If there is a Conditional Use Permit(s) available because there has not been a complete application received for that available permit, then a new lot drawing will take place six (6) City business days after the date the previous lot drawing was held. Until the maximum number of allowable Dispensary Conditional Use Permits have been issued, a new lot drawing will be held every six (6) City business days, as long as the number of complete applications exceeds the number of available Dispensary Conditional Use Permits; or

- b. If there is a Conditional Use Permit(s) available because a previous application was denied by the Planning Commission, then a new lot drawing will take place six (6) City business days after both (1) the previous application was denied and (2) any and all applicable appeals have been exhausted and any and all appeal periods have expired.
2. After the maximum number of allowable Dispensary Conditional Use Permits have been issued, if at any time the number of Dispensaries permitted in the City drops below the amount allowed under Section 9.108.070.A, then ten (10) City business days following the date on which a Dispensary Conditional Use Permit(s) becomes available, lots will again be drawn among all applications submitted to determine the order in which the applications shall be processed and considered by the Planning Commission for issuance of Dispensary Conditional Use Permits. A list shall again be established in accordance with the procedures set forth in subdivision B.1 of this Section, and the process shall be repeated until the available number of permits (as allowed under Section 9.108.070.A) has been granted. If on any lot-drawing day, there are fewer complete applications received than the number of available Dispensary Conditional Use Permits, then the application(s) shall be processed and considered by the Planning Commission without any lot drawing.

9.108.080 Conditional Use Permit Requirements.

- A. Prior to initiating operations and as a continuing requisite to operating a Medical Marijuana Dispensary, the applicant (the authorized agent or other such person authorized as the lawful representative of the marijuana collective or cooperative wishing to operate such Dispensary) shall obtain a Dispensary Conditional Use Permit under the terms and conditions set forth in this Chapter and Chapter 9.72 of this Code. If there is a conflict between the requirements of Chapter 9.72 and this Chapter, the requirements of this Chapter 9.108 shall prevail. The applicant shall file an application for a Dispensary Conditional Use Permit with the Community Development Department on the official form supplied by the City and shall pay the applicable application fee as established by resolution of the City Council, as may be amended from time to time. An application for a Dispensary Conditional Use Permit shall include, but shall not be limited to, the following information:
 1. An estimate of the size of the group of primary caregivers and/or qualified patients who will be served by the Dispensary;

2. Whether delivery service of Medical Marijuana to any location outside the Dispensary will be provided and the extent of such service;
3. The address of the location of the Dispensary;
4. A site plan and floor plan of the Dispensary denoting all the use of areas of the Dispensary, including storage, employee areas, exterior lighting, restrooms, and signage;
5. A security plan that addresses how the following required measures shall be implemented or complied with:
 - a. Security cameras shall be installed and maintained in good condition, and used in an on-going manner with at least 120 concurrent hours of digitally recorded documentation in a format approved by the Community Development Director. The cameras shall be in use 24 hours per day, 7 days per week. The areas to be covered by the security cameras shall include, but are not limited to, the public areas, storage areas, all doors and windows, and any other areas as determined to be necessary by the Director and/or the Chief of Police, to an extent sufficient to ensure the safety of persons and deter crime. However, in the interior locations, cameras shall be positioned so as not to view or otherwise record patients' protected health information, such as those patient records visible on computer screens or other printed files, the confidentiality of which shall be maintained in accordance with applicable Federal or State laws.
 - b. The Dispensary shall be alarmed with an audible interior and exterior alarm system that is operated and monitored by a recognized security company, deemed acceptable by the Director. Any change in the security company shall be subject to the approval of the Director. All current contact information regarding the Dispensary's security company shall be provided to the Director.
 - c. Areas in which marijuana is dispensed to qualified patients or designated caregivers shall be secured and maintained separately from any lobby or waiting area. Any areas in which medical marijuana or related products are stored shall be under the secure control of Dispensary staff at all times and locked when not in use.
 - d. The business entrance(s) and all window areas shall be illuminated during evening hours. The applicant shall comply with the City's lighting standards regarding fixture type, wattage, illumination levels,

shielding, etc., and secure the necessary approvals and permits as needed.

e. All windows on the building that houses the Dispensary shall be appropriately secured and all marijuana securely stored.

6. The name and address of any person who is managing or responsible for the Dispensary's activities, the names and addresses of any employees, independent contractors or volunteers, if any, and a statement as to whether such person or persons has or have been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received for such conviction(s);
 7. The name and address of the owner and lessor of the real property upon which the Dispensary is to be operated. In the event the applicant is not the legal owner of the property, the application must be accompanied by a notarized acknowledgement from the owner of the property that a Medical Marijuana Dispensary will be operated on his/her property;
 8. Authorization for the Community Development Director to seek verification of the information contained within the application and authorization for the Chief of Police to conduct background checks as set forth in Section 9.108.090;
 9. Evidence that the entity operating the Dispensary is organized as a bona fide non-profit cooperative, affiliation, association, or collective of persons comprised exclusively and entirely of qualified patients and the primary caregivers of those patients in strict accordance with all State Laws;
 10. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct; and
 11. Any such additional and further information as is deemed necessary by the Community Development Director to administer this Section or this Chapter.
- B. The Director and appropriate City staff shall review, verify and investigate all information on the application and prepare a report for the Planning Commission incorporating the findings of such investigation and verification, including but not limited to, the suitability of the proposed location, the applicant's compliance with the requirements of this Chapter,

this Section and Chapter 9.72, and the results of the background check performed by Chief of Police.

- C. All Medical Marijuana Dispensaries shall annually provide to the Director an updated application containing the information required by this Section.

9.108.090 Background Check.

- A. The Chief of Police or his/her designee shall conduct a criminal background check of any applicant for a Medical Marijuana Dispensary Conditional Use Permit, including background checks on any person who is managing or is otherwise responsible for the activities of the Dispensary's related Cooperative or Collective, and any employee or volunteer, and shall prepare a report to the Director (for incorporation into the report provided to the Planning Commission) on the acceptability of the background of the applicant and such other persons requiring background checks as set forth herein. If a change in management or of the responsible person occurs, the medical marijuana dispensary must notify the City thereof in writing within 10 business days and said new person serving as the manager or responsible person shall be subject to the same background check and approval process as the original manager. If said person is not approved by the City the Medical Marijuana Dispensary shall cease operating until a manager or responsible person is approved.

9.108.100 Grounds for denial of Permit; Additional Conditions Imposed

- A. Following the public hearing, the Planning Commission shall deny an application for a Medical Marijuana Dispensary Conditional Use Permit upon making any of the following findings, which shall be made part of the record of the meeting/public hearing:
 - 1. The applicant has made one or more false or misleading statements or omissions on the application or during the application process; or
 - 2. The proposed Dispensary's related Cooperative or Collective is not organized in strict compliance with State Laws or any other applicable law, statute, ordinance, or regulation; or
 - 3. The applicant is not a Primary Caregiver or Qualified Patient or a duly authorized agent or legal representative of the members of the Dispensary's related Cooperative or Collective; or
 - 4. The applicant, or any person who is managing or is otherwise responsible for the activities of the Dispensary, or any employee(s)

or volunteer(s), if any, has been convicted of a felony, or convicted of a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution or similar activities related to controlled substances, with the exception of marijuana related offenses for which the conviction occurred prior to passage of Compassionate Use Act ("CUA"), and which would be defensible today under the CUA. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere; or

5. That the findings required by Section 9.72.010 of this Code for the granting of a Conditional Use Permit cannot be made; or
 6. The applicant, or any person who is managing or is otherwise responsible for the activities of the proposed Dispensary has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices, or is currently in violation of any City Ordinance or regulation or has an unpaid obligation to the City or any of its departments which is or has become due.
- B. Based on the information set forth in the application and City staff's report, the Planning Commission may impose reasonable terms and conditions on the proposed operations in addition to those specified in and required to be included in every Dispensary Conditional Use Permit granted under this Chapter. All such additional terms and conditions shall be supported by written findings that substantiate a need for the additional terms and conditions to mitigate or eliminate any potential secondary effects associated with the public health, safety and welfare.

9.108.110 Limitations on City's Liability.

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any Dispensary Conditional Use Permit pursuant to this Chapter or the operation of any Dispensary approved for such permit pursuant to this Chapter. As a condition of approval a Dispensary Conditional Use Permit granted under this Chapter, the applicant or its legal representative shall:

- A. Execute an agreement indemnifying and holding the City harmless from any and all claims, damages, legal or enforcement actions, including but not limited to, any actions or claims associated with violation of federal law associated with the operation of the Dispensary; and
- B. Maintain insurance in the amounts and of the types that are acceptable to the City; and

- C. Name the City as an additionally insured on all City required insurance policies; and
- D. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a Dispensary Conditional Use Permit or the operation of the Dispensary; and
- E. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge (or federal enforcement action) related to the City's approval of a Dispensary Conditional Use Permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

9.108.120 Other Operating Requirements (Conditions of Approval).

- A. In addition to any terms and conditions imposed by the Planning Commission pursuant to Sections 9.108.100 and Chapter 9.72, Dispensary operations shall only be established and managed in compliance with the following standards, which shall be included as conditions of approval in each Dispensary Conditional Use Permit:
 - 1. All Dispensaries shall comply fully with all of the applicable restrictions and mandates set forth in State Laws and federal law.
 - 2. All Dispensaries shall only be open between the hours of 8:00 a.m. and 10:00 p.m., seven days a week.
 - 3. Physician's referrals shall be verified by the cooperative prior to inclusion into the cooperative and at least every six (6) months thereafter.
 - 4. All Dispensaries shall maintain patient records in a secure location within the territorial jurisdiction of the City and available for the Director or the City Manager to review upon demand for purposes of determining compliance with the requirements of this Chapter and State Law. Such records shall include, without limitation a copy of the physician's referral, proof of membership in the related Collective or Cooperative and, if using a primary caregiver, a notarized written authorization from the patient to be represented by such primary caregiver. The information provided for purposes of this subsection shall be maintained by the City as confidential information, and shall not be disclosed as public records unless pursuant to subpoena issued by a court of competent jurisdiction.

5. All Dispensaries shall maintain a current register of the names of all volunteers and employees currently working at or employed by the Dispensary, and shall disclose such register for inspection by any City officer or official for purposes of determining compliance with the requirements of this Chapter.
6. Medical Marijuana shall be kept in a secured manner during business and non-business hours, in accordance with the required security plan.
7. Each Dispensary that prepares, dispenses, or in any manner distributes edible Medical Marijuana products (including without limitation, brownies, cookies, lollipops, etc.) must comply with the provisions of all relevant State and local laws regarding the preparation, distribution, and sale of food.
8. Dispensaries may sell or otherwise provide Medical Marijuana related equipment, supplies and general information to any members of the Dispensary's collective or cooperative, provided that such material is only displayed in the Medical Marijuana distribution area of the Dispensary. All transactions between the Dispensary's related Cooperative or Collective and its members or the members' primary caregivers shall be made by personal check or credit card; no cash transactions shall be allowed.
9. Dispensaries shall have an electronic point of sale system that produces historical transactional data for review by the City Manager for auditing purposes. For purposes of this subsection, an "electronic point of sale system" shall mean an electronically operated register or computer system that produces an electronic or automatic paper record for all transactions associated with any product sold, rented or otherwise provided to the Dispensary's members or purchased or received from them.
10. Any Dispensaries must pay any applicable sales tax pursuant to federal, state, and local law.
11. On-site smoking, ingestion, or consumption of Marijuana or alcohol shall be prohibited on the premises of all Dispensaries. The term "premises" as used in this Subsection includes the actual building, as well as any accessory structures and parking areas. The building entrance to a Dispensary shall be clearly and legibly posted with a notice indicating that smoking, ingesting, or

consuming marijuana on the premises or in the vicinity of the cooperative or collective is prohibited.

12. Unless otherwise provided in this Chapter, signage for the Dispensary which is viewable from the exterior of the Dispensary shall be limited to name of the business only and its hours of operation. No drawings or pictures shall be permitted on signage that is viewable from the exterior of the Dispensary, except that a green "Swiss Cross" may be viewable.
13. Alcoholic beverages shall not be sold, provided, stored, distributed, or consumed on the premises of a Dispensary. No Dispensary or its related Collective or Cooperative shall hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.
14. A Dispensary shall be sited in a visible location that provides good views of the dispensary entrance, windows and the exterior of the premises from the public street.
15. No person under eighteen (18) years of age shall be permitted in a Dispensary, unless that person is a verified member of the Dispensary's related Collective or Cooperative and is accompanied by a parent or legal guardian.
16. A Dispensary shall not have a physician on-site to evaluate patients or to provide a recommendation for Medical Marijuana. Potential patients or caregivers shall not visit a Dispensary without first having obtained a valid written recommendation from their physician recommending use of Medical Marijuana.
17. The building in which the Dispensary is located as well as all operations as conducted therein, shall fully comply with all applicable rules, regulations, and laws including, but not limited to, zoning and building codes, Chapter 3.28 of the this Code requiring application and issuance of a business license, the Revenue and Taxation Code, the Americans with Disabilities Act, and all applicable State Laws.
18. The Dispensary shall not distribute, sell, dispense, or administer Medical Marijuana to anyone other than qualified patient members of the Dispensary's related Cooperative or Collective and their primary caregivers.

19. The Dispensary must provide the Director with the name, phone number, facsimile number, and email address of an on-site community relations representative or staff person or other representative to whom the City can provide notice if there are operating problems associated with the Dispensary or refer members of the public who may have complaints or concerns regarding the Dispensary. The Dispensary shall also provide this contact information to all neighboring businesses located within 100 feet of the Dispensary, as measured in a straight line without regard to intervening structures, between the front doors of each establishment.
 20. Fully comply with and meet all operating criteria required pursuant to State Laws, the provisions of this Code, and any specific, additional operating procedures and measures as may be imposed as conditions of approval in the Dispensary Conditional Use Permit, in order to ensure that the operation of the Dispensary is consistent with the protection of the health, safety, and welfare of the community, qualified patients, and primary caregivers, and will not adversely affect surrounding uses.
- B. Dispensaries shall also be required to install/provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the Dispensary that is distinctive to its operation is not detected outside the Dispensary, anywhere on adjacent property or public rights-of-way, on or about any exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for common use by tenants or the visiting public, or within any other unit located within the same building as the Dispensary.
1. As such, dispensaries must install and maintain the following equipment or any other equipment which the Planning Commission determines has the same or better effectiveness:
 - a. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally; or
 - b. An air system that creates negative air pressure between the Dispensary's interior and exterior so that the odors generated inside the Dispensary are not detectable outside the Dispensary.
 2. For enforcement purposes, the standard for determining what constitutes an unlawful odor under this subsection shall be whether such an odor would be deemed offensive to a reasonable number of

persons on an ongoing or periodic basis and personally detectable by City staff or law enforcement personnel.

9.108.130 Inspections and Enforcement.

- A. Recordings made by security cameras at any Dispensary shall be confidential and not subject to public inspection or disclosure; except that such recordings shall be made immediately available to the Director, the City Manager or the Chief of Police upon verbal request for law enforcement and criminal investigation purposes.
- B. The Director, the City Manager or their designated code enforcement officers shall have the right to enter all Dispensaries from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this Chapter. Such inspections shall be limited to observing the premises of the Dispensary for purposes of determining whether the Dispensary is being operated or maintained in compliance with this Code, State Law, and other applicable laws and regulations.
- C. The Director or the City Manager shall have the right to inspect membership records pursuant to section 9.108.120 for the sole purpose of determining whether all members of the Dispensary's related Collective or Cooperative are qualified. Such inspections of membership records shall not be used for any other purposes, nor shall the records be removed off-site by the City without a court order.
- D. Operation of the Dispensary in non-compliance with any conditions of approval or the provisions of this Chapter or Chapter 9.72 shall constitute a violation of the Municipal Code and shall be enforced pursuant to the provisions of this Chapter and this Code.
- E. The Planning Commission and/or the City Council, in accordance with the provisions and procedures set forth in Section 9.72.130 of this Code, may revoke a Medical Marijuana Dispensary Conditional Use Permit if any of the following, singularly or in combination, occur:
 - 1. The Planning Commission and/or the City Council determine that the Dispensary has failed to comply with this Chapter or any condition of approval or a circumstance or situation has been created that would have permitted the Planning Commission to initially deny the Dispensary Conditional Use Permit under Section 9.108.100 or Chapter 9.72 of this Code; or
 - 2. Operations cease for more than 90 calendar days; or

3. The Cooperative or Collective fails to maintain 120 continuous hours of security recordings; or
 4. The Dispensary fails to allow inspection of the security recordings, membership records, the employee register, the point of sale transaction data or inspection of the premises, as provided for herein above, by authorized City officials; or
 5. Any of the findings set forth in Section 9.72.130.C of this Code are made.
- F. Prior to any initiating revocation proceedings, the subject Dispensary shall be given a compliance period of at least fourteen (14) days, which may be extended by the Director upon a finding that the subject Dispensary is attempting in good faith to resolve the non-compliance issue.

9.108.140 Appeals.

Any decision regarding the Planning Commission's approval, denial, or revocation of a Dispensary Conditional Use Permit may be appealed to the City Council in accordance with the provisions of Section 9.72.080, and is subject to de novo review by the City Council pursuant to Section 9.72.090 of this Code.

9.108.150. Cessation of operations.

In the event a properly permitted Dispensary ceases to operate for any reason, and the number of allowable Dispensaries falls below the number permitted in Section 9.108.070.A, City staff shall initiate the procedure set forth in Section 9.108.070.B.2 of this Chapter.

9.108.160 Automatic Termination of Permit upon Change of Ownership.

A Conditional Use Permit issued to a Dispensary pursuant to this Chapter shall automatically terminate upon a change of ownership.

9.108.170 Pre-Existing Dispensaries Unlawful.

Any Medical Marijuana Dispensary established or operating in the City in violation of the ban established by Ordinance Nos. 675 and 677, shall not be considered a lawful or permitted non-conforming use, and no such Dispensary shall be eligible for issuance of a Dispensary Conditional Use Permit. Further, any such unlawfully established Dispensary shall constitute a public nuisance subject to abatement by the City.

9.108.180 Violations

- A. **Public Nuisance.** It is unlawful and it shall be a public nuisance subject to the provisions of Chapter 13.90 of this Code, to establish, maintain, or operate a Medical Marijuana Dispensary within the City without complying with the provisions of and having received a Dispensary Conditional Use Permit as provided for in this Chapter and Chapter 9.72 of this Code.
- B. **Misdemeanor.** Any violation of the provisions of this Chapter by any person responsible for committing, causing or maintaining such violation shall constitute a misdemeanor violation which shall be subject to the provisions set forth in Chapter 13.70, including but not limited to, the imposition of any and all criminal penalties set forth therein.
- C. **Civil Fines.** Any person convicted of a misdemeanor violation under this Chapter shall, for each separate violation of the provisions of this Chapter, be subject to a fine in an amount not to exceed: (1) five hundred dollars for the first conviction of an offense; (2) seven hundred fifty dollars for a second conviction of the same offense within a twelve-month period of the date of the first offense; and (3) one thousand dollars for the third conviction of the same offense within a twelve-month period of the date of the first offense. The fine for a fourth and subsequent convictions of the same offense within a twelve-month period of the date of the first offense shall be fifteen hundred dollars.
- D. In lieu of issuing a misdemeanor citation, the City may issue an administrative citation, pursuant to Chapter 13.58, to any person responsible for committing, causing or maintaining a violation of this Chapter. Nothing in this subsection shall preclude the City from also issuing a misdemeanor citation upon the occurrence of the same offense on a separate day.
- E. Any person issued an administrative citation for violating any provision of the Chapter shall for each separate violation be subject to an administrative fine in an amount not to exceed: (1) five hundred dollars for the first citation; (2) seven hundred and fifty dollars for a second citation issued for the same offense within a twelve-month period of the date of the first offense; and (3) one thousand dollars for a third and any subsequent citation issued for the same offense within a twelve-month period of the date of the first offense.

Section 2. SECTION 13.80.240 OF CHAPTER 13.80 OF THE CODE REPEALED AND AMENDED

Section 13.80.240 "Medical Marijuana Dispensaries" of Chapter 13.80 "Public Nuisances" of Title 13 "Code Enforcement" of the Cathedral City Municipal Code is hereby repealed in its entirety and amended to read as follows:

13.80.240 Medical Marijuana Dispensaries.

It is unlawful and it shall be a public nuisance subject to the provisions of Chapter 13.90 of this Code, to establish, maintain, or operate a Medical Marijuana Dispensary within the City without complying with the provisions of and having received a Conditional Use Permit as required under Chapters 9.108 and 9.72 of this Code. The term "Medical Marijuana Dispensary" shall have the definition set forth in Section 9.108.030 of this Code.

Section 3. SECTION 9.40.040 OF CHAPTER 9.40 OF THE CODE AMENDED

Section 9.40.040 "Conditional Uses" of Chapter 9.40 "I-1 Light Industrial District" of Title 9 of the Cathedral City Municipal Code is hereby amended to add the following to its list of uses which may be permitted subject to the issuance of a conditional use permit pursuant to Chapter 9.72:

Medical Marijuana Dispensaries, subject also to compliance with all provisions of Chapter 9.108 of this Code.

Section 4. SECTION 9.36.040 OF CHAPTER 9.36 OF THE CODE AMENDED

Section 9.36.040 "Conditional Uses" of Chapter 9.36 "CBP-2 Commercial Business Park District" of Title 9 of the Cathedral City Municipal Code is hereby amended to add the following to its list of uses which may be permitted subject to the issuance of a conditional use permit pursuant to Chapter 9.72:

Medical Marijuana Dispensaries, subject also to compliance with all provisions of Chapter 9.108 of this Code.

Section 5. SECTION 9.30.030 OF CHAPTER 9.30 OF THE CODE AMENDED

Section 9.30.030 "Conditional Uses" of Chapter 9.30 "PCC Planned Community Commercial District" of Title 9 of the Cathedral City Municipal Code is hereby amended to add the following to its list of uses which may be permitted subject to the issuance of a conditional use permit pursuant to Chapter 9.72:

Medical Marijuana Dispensaries, subject also to compliance with all provisions of Chapter 9.108.

Section 6. ENVIRONMENTAL FINDINGS

The City Council finds that this Ordinance is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303(c), as it would only permit projects consisting of a limited number of new, small facilities; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

Section 7. SEVERABILITY

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 8. REPEAL OF CONFLICTING PROVISIONS

All the provisions of the Cathedral City Municipal Code as heretofore adopted that are in conflict with the provisions of this Ordinance are hereby repealed. Specifically, Ordinances 675, 677, and 724 are hereby repealed.

Section 9. ADOPTION AND PASSAGE; EFFECTIVE DATE

This Ordinance shall be deemed passed, approved and adopted by the City Council thirty (30) days after its second reading and adoption by the City Council.

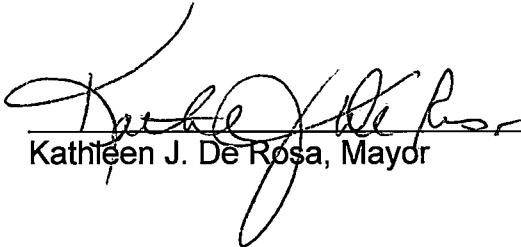
Section 10. POSTING

The City Clerk shall within 15 days after passage of this Ordinance, cause it to be posted in at least three (3) designated public places; shall certify to the adoption and posting of this Ordinance; and shall cause this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of this City.

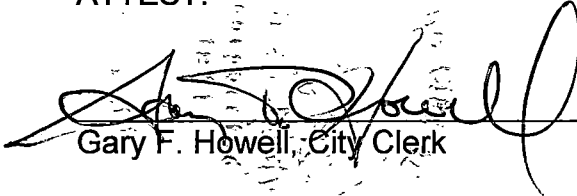
Section 12. CERTIFICATION

The foregoing Ordinance was approved and adopted at a meeting of the City Council held on August 13, 2014, by the following vote:

Ayes:	Councilmembers Toles and Pettis, Mayor Pro Tem Vasquez
Noes:	Councilmember Henry and Mayor DeRosa
Abstain:	None
Absent:	None


Kathleen J. De Rosa, Mayor

ATTEST:


Gary F. Howell, City Clerk

APPROVED AS TO FORM:


Charles R. Green, City Attorney

EXHIBIT A

**GUIDELINES FOR THE SECURITY AND NON-DIVERSION
OF MARIJUANA GROWN FOR MEDICAL USE
*August 2008***



**GUIDELINES FOR THE SECURITY AND NON-DIVERSION
OF MARIJUANA GROWN FOR MEDICAL USE**
August 2008

In 1996, California voters approved an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2003, the Legislature enacted additional legislation relating to medical marijuana. One of those statutes requires the Attorney General to adopt “guidelines to ensure the security and nondiversion of marijuana grown for medical use.” (Health & Saf. Code, § 11362.81(d).¹) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

I. SUMMARY OF APPLICABLE LAW

A. California Penal Provisions Relating to Marijuana.

The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law. (See, e.g., § 11357 [possession of marijuana is a misdemeanor]; § 11358 [cultivation of marijuana is a felony]; Veh. Code, § 23222 [possession of less than 1 oz. of marijuana while driving is a misdemeanor]; § 11359 [possession with intent to sell any amount of marijuana is a felony]; § 11360 [transporting, selling, or giving away marijuana in California is a felony; under 28.5 grams is a misdemeanor]; § 11361 [selling or distributing marijuana to minors, or using a minor to transport, sell, or give away marijuana, is a felony].)

B. Proposition 215 - The Compassionate Use Act of 1996.

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician’s recommendation. (§ 11362.5.) Proposition 215 was enacted to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana,” and to “ensure that patients and their primary caregivers who obtain and use marijuana for

¹ Unless otherwise noted, all statutory references are to the Health & Safety Code.

medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.” (§ 11362.5(b)(1)(A)-(B).)

The Act further states that “Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or verbal recommendation or approval of a physician.” (§ 11362.5(d).) Courts have found an implied defense to the transportation of medical marijuana when the “quantity transported and the method, timing and distance of the transportation are reasonably related to the patient’s current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551.)

C. Senate Bill 420 - The Medical Marijuana Program Act.

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78.)

It is mandatory that all counties participate in the identification card program by (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b).)

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder’s status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use.

In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

D. Taxability of Medical Marijuana Transactions.

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller’s Permit. (<http://www.boe.ca.gov/news/pdf/medseller2007.pdf>.) According to the Notice, having a Seller’s Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a

June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (<http://www.boe.ca.gov/news/pdf/173.pdf>.)

E. Medical Board of California.

The Medical Board of California licenses, investigates, and disciplines California physicians. (Bus. & Prof. Code, § 2000, et seq.) Although state law prohibits punishing a physician simply for recommending marijuana for treatment of a serious medical condition (§ 11362.5(c)), the Medical Board can and does take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana. In a May 13, 2004 press release, the Medical Board clarified that these accepted standards are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:

1. Taking a history and conducting a good faith examination of the patient;
2. Developing a treatment plan with objectives;
3. Providing informed consent, including discussion of side effects;
4. Periodically reviewing the treatment's efficacy;
5. Consultations, as necessary; and
6. Keeping proper records supporting the decision to recommend the use of medical marijuana.

(http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html.)

Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or www.mbc.ca.gov), which investigates and prosecutes alleged licensing violations in conjunction with the Attorney General's Office.

F. The Federal Controlled Substances Act.

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at §§ 841(a)(1), 844(a).)

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.) Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

In light of California's decision to remove the use and cultivation of physician-recommended marijuana from the scope of the state's drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws.

II. DEFINITIONS

A. **Physician's Recommendation:** Physicians may not prescribe marijuana because the federal Food and Drug Administration regulates prescription drugs and, under the CSA, marijuana is a Schedule I drug, meaning that it has no recognized medical use. Physicians may, however, lawfully issue a verbal or written recommendation under California law indicating that marijuana would be a beneficial treatment for a serious medical condition. (§ 11362.5(d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632.)

B. **Primary Caregiver:** A primary caregiver is a person who is designated by a qualified patient and "has consistently assumed responsibility for the housing, health, or safety" of the patient. (§ 11362.5(e).) California courts have emphasized the consistency element of the patient-caregiver relationship. Although a "primary caregiver who consistently grows and supplies . . . medicinal marijuana for a section 11362.5 patient is serving a health need of the patient," someone who merely maintains a source of marijuana does not automatically become the party "who has consistently assumed responsibility for the housing, health, or safety" of that purchaser. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, 1400.) A person may serve as primary caregiver to "more than one" patient, provided that the patients and caregiver all reside in the same city or county. (§ 11362.7(d)(2).) Primary caregivers also may receive certain compensation for their services. (§ 11362.765(c) ["A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . shall not, on the sole basis of that fact, be subject to prosecution" for possessing or transporting marijuana].)

C. **Qualified Patient:** A qualified patient is a person whose physician has recommended the use of marijuana to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (§ 11362.5(b)(1)(A).)

D. **Recommending Physician:** A recommending physician is a person who (1) possesses a license in good standing to practice medicine in California; (2) has taken responsibility for some aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient; and (3) has complied with accepted medical standards (as described by the Medical Board of California in its May 13, 2004 press release) that a reasonable and prudent physician would follow when recommending or approving medical marijuana for the treatment of his or her patient.

III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

A. State Law Compliance Guidelines.

1. **Physician Recommendation:** Patients must have a written or verbal recommendation for medical marijuana from a licensed physician. (§ 11362.5(d).)
2. **State of California Medical Marijuana Identification Card:** Under the MMP, qualified patients and their primary caregivers may voluntarily apply for a card issued by DPH identifying them as a person who is authorized to use, possess, or transport marijuana grown for medical purposes. To help law enforcement officers verify the cardholder's identity, each card bears a unique identification number, and a verification database is available online (www.calmmp.ca.gov). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date. (§§ 11362.71(a); 11362.735(a)(3)-(4); 11362.745.)
3. **Proof of Qualified Patient Status:** Although verbal recommendations are technically permitted under Proposition 215, patients should obtain and carry written proof of their physician recommendations to help them avoid arrest. A state identification card is the best form of proof, because it is easily verifiable and provides immunity from arrest if certain conditions are met (see section III.B.4, below). The next best forms of proof are a city- or county-issued patient identification card, or a written recommendation from a physician.
4. **Possession Guidelines:**
 - a) **MMP:**² Qualified patients and primary caregivers who possess a state-issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. (§ 11362.77(a).) But, if "a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs." (§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)
 - b) **Local Possession Guidelines:** Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess

² On May 22, 2008, California's Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute's possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess. (See *People v. Kelly* (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in *People v. Phomphakdy* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in *Kelly* and the Attorney General intends to seek review in *Phomphakdy*.

medical marijuana in amounts that exceed the MMP's possession guidelines. (§ 11362.77(c).)

c) **Proposition 215:** Qualified patients claiming protection under Proposition 215 may possess an amount of marijuana that is “reasonably related to [their] current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)

B. Enforcement Guidelines.

1. **Location of Use:** Medical marijuana may not be smoked (a) where smoking is prohibited by law, (b) at or within 1000 feet of a school, recreation center, or youth center (unless the medical use occurs within a residence), (c) on a school bus, or (d) in a moving motor vehicle or boat. (§ 11362.79.)

2. **Use of Medical Marijuana in the Workplace or at Correctional Facilities:** The medical use of marijuana need not be accommodated in the workplace, during work hours, or at any jail, correctional facility, or other penal institution. (§ 11362.785(a); *Ross v. RagingWire Telecomms., Inc.* (2008) 42 Cal.4th 920, 933 [under the Fair Employment and Housing Act, an employer may terminate an employee who tests positive for marijuana use].)

3. **Criminal Defendants, Probationers, and Parolees:** Criminal defendants and probationers may request court approval to use medical marijuana while they are released on bail or probation. The court's decision and reasoning must be stated on the record and in the minutes of the court. Likewise, parolees who are eligible to use medical marijuana may request that they be allowed to continue such use during the period of parole. The written conditions of parole must reflect whether the request was granted or denied. (§ 11362.795.)

4. **State of California Medical Marijuana Identification Cardholders:** When a person invokes the protections of Proposition 215 or the MMP and he or she possesses a state medical marijuana identification card, officers should:

a) Review the identification card and verify its validity either by calling the telephone number printed on the card, or by accessing DPH's card verification website (<http://www.calmmp.ca.gov>); and

b) If the card is valid and not being used fraudulently, there are no other indicia of illegal activity (weapons, illicit drugs, or excessive amounts of cash), and the person is within the state or local possession guidelines, the individual should be released and the marijuana should not be seized. Under the MMP, “no person or designated primary caregiver in possession of a valid state medical marijuana identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana.” (§ 11362.71(e).) Further, a “state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer

has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.” (§ 11362.78.)

5. **Non-Cardholders:** When a person claims protection under Proposition 215 or the MMP and only has a locally-issued (i.e., non-state) patient identification card, or a written (or verbal) recommendation from a licensed physician, officers should use their sound professional judgment to assess the validity of the person’s medical-use claim:

a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.

b) Officers should review any written documentation for validity. It may contain the physician’s name, telephone number, address, and license number.

c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.

d) Alternatively, if the officer has probable cause to doubt the validity of a person’s medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.

e) Officers are not obligated to accept a person’s claim of having a verbal physician’s recommendation that cannot be readily verified with the physician at the time of detention.

6. **Exceeding Possession Guidelines:** If a person has what appears to be valid medical marijuana documentation, but exceeds the applicable possession guidelines identified above, all marijuana may be seized.

7. **Return of Seized Medical Marijuana:** If a person whose marijuana is seized by law enforcement successfully establishes a medical marijuana defense in court, or the case is not prosecuted, he or she may file a motion for return of the marijuana. If a court grants the motion and orders the return of marijuana seized incident to an arrest, the individual or entity subject to the order must return the property. State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the CSA. (21 U.S.C. § 885(d).) Once the marijuana is returned, federal authorities are free to exercise jurisdiction over it. (21 U.S.C. §§ 812(c)(10), 844(a); *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 369, 386, 391.)

IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

Under California law, medical marijuana patients and primary caregivers may “associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes.” (§ 11362.775.) The following guidelines are meant to apply to qualified patients and primary caregivers who come together to collectively or cooperatively cultivate physician-recommended marijuana.

A. Business Forms: Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes. The following are guidelines to help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so.

1. **Statutory Cooperatives:** A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a “cooperative” (or “co-op”) unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) Cooperative corporations are “democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons.” (*Id.* at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (*Ibid.*) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See *id.* at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities “since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.” (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002, et seq.) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

2. **Collectives:** California law does not define collectives, but the dictionary defines them as “a business, farm, etc., jointly owned and operated by the members of a group.” (*Random House Unabridged Dictionary*; Random House, Inc. © 2006.) Applying this definition, a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.

B. Guidelines for the Lawful Operation of a Cooperative or Collective:

Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation.

1. **Non-Profit Operation:** Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) [“nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit”]).
2. **Business Licenses, Sales Tax, and Seller’s Permits:** The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller’s Permit. Some cities and counties also require dispensing collectives and cooperatives to obtain business licenses.
3. **Membership Application and Verification:** When a patient or primary caregiver wishes to join a collective or cooperative, the group can help prevent the diversion of marijuana for non-medical use by having potential members complete a written membership application. The following application guidelines should be followed to help ensure that marijuana grown for medical use is not diverted to illicit markets:
 - a) Verify the individual’s status as a qualified patient or primary caregiver. Unless he or she has a valid state medical marijuana identification card, this should involve personal contact with the recommending physician (or his or her agent), verification of the physician’s identity, as well as his or her state licensing status. Verification of primary caregiver status should include contact with the qualified patient, as well as validation of the patient’s recommendation. Copies should be made of the physician’s recommendation or identification card, if any;
 - b) Have the individual agree not to distribute marijuana to non-members;
 - c) Have the individual agree not to use the marijuana for other than medical purposes;
 - d) Maintain membership records on-site or have them reasonably available;
 - e) Track when members’ medical marijuana recommendation and/or identification cards expire; and
 - f) Enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have expired, or who are caught diverting marijuana for non-medical use.

4. **Collectives Should Acquire, Possess, and Distribute Only Lawfully Cultivated Marijuana:** Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed-circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical marijuana to non-medical markets, collectives and cooperatives should document each member's contribution of labor, resources, or money to the enterprise. They also should track and record the source of their marijuana.

5. **Distribution and Sales to Non-Members are Prohibited:** State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. (§ 11362.765(c).) Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

6. **Permissible Reimbursements and Allocations:** Marijuana grown at a collective or cooperative for medical purposes may be:

- a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
- b) Provided in exchange for services rendered to the entity;
- c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
- d) Any combination of the above.

7. **Possession and Cultivation Guidelines:** If a person is acting as primary caregiver to more than one patient under section 11362.7(d)(2), he or she may aggregate the possession and cultivation limits for each patient. For example, applying the MMP's basic possession guidelines, if a caregiver is responsible for three patients, he or she may possess up to 24 oz. of marijuana (8 oz. per patient) and may grow 18 mature or 36 immature plants. Similarly, collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers. Any patient or primary caregiver exceeding individual possession guidelines should have supporting records readily available when:

- a) Operating a location for cultivation;
- b) Transporting the group's medical marijuana; and
- c) Operating a location for distribution to members of the collective or cooperative.

8. **Security:** Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transactions.

C. **Enforcement Guidelines:** Depending upon the facts and circumstances, deviations from the guidelines outlined above, or other indicia that marijuana is not for medical use, may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify medical marijuana collectives and cooperatives that are operating outside of state law.

1. **Storefront Dispensaries:** Although medical marijuana “dispensaries” have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives. (§ 11362.775.) It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in sections IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash “donations” – are likely unlawful. (*Peron, supra*, 59 Cal.App.4th at p. 1400 [cannabis club owner was not the primary caregiver to thousands of patients where he did not consistently assume responsibility for their housing, health, or safety].)

2. **Indicia of Unlawful Operation:** When investigating collectives or cooperatives, law enforcement officers should be alert for signs of mass production or illegal sales, including (a) excessive amounts of marijuana, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California.